

CW 4-1047

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9 September 1958

OGC HAS REVIEWED.

MEMORANDUM FOR: Special Support Assistant to the
Deputy Director (Support)

SUBJECT : Preparation of Book Dispatch

1. The Office of General Counsel opinion quoted below advises that a separation allowance may be granted where it appears that the condition requiring the separation will continue for a period of ninety days, even though the separation does not in fact continue for ninety days. This Office of General Counsel opinion reverses a previous opinion issued by that Office.

2. In order to assure that all field personnel are apprised of this change, it is requested that a book dispatch be prepared for Chiefs of all Stations and Bases incorporating the following Office of General Counsel opinion:

a. An opinion has been requested as to whether an employee, granted a separation allowance in accordance with Section 260 of the Standardized Regulations (Government Civilian, Foreign Areas), whose dependents are subsequently allowed to join him because of the termination of the conditions requiring separation, and who join him less than ninety days after the grant, must refund the amounts he received under the grant.

b. Separation allowances are granted Agency employees under authority of the KUBARK Act, Section 5(b), and Executive Order 10100, and must conform to the Standardized Regulations. We must therefore look to the Standardized Regulations for authority to make a grant of less than ninety days.

c. Paragraph 262.32 of the Standardized Regulations reads as follows:

✓ "A separation allowance shall not be granted where the condition which meets any of the requirements of Section 262.1 appears to require separation for a period of less than 90 consecutive calendar days. After expiration of the 90-day

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period a grant previously disapproved under this section may be made for the entire period of separation (subject to the provisions of Section 264.1) if the condition necessitating separation continued for a longer period."

The problem is, then, whether the words "appears to require" mean that the entire paragraph is to be read as a condition precedent or whether the paragraph means any grant for less than ninety days is void ab initio. We think it is a condition precedent. Where the situation requiring separation truly appears to require it for ninety days or more but by chance turns out not to, we think the condition of paragraph 262.32 has been met.

d. A word of caution: The word "appears" is to be taken to mean "appears to the official approving the grant," and this appearance must be reasonable, and in good faith. Therefore, grants which may turn out to be for less than ninety days should be subjected to close security, both before and after the fact, in order to prevent abuse. We are transmitting a copy of this opinion to the Director of Personnel with a recommendation that he assure compliance with the standards of good faith and reasonableness.

e. In our memorandum of 1 August 1957 to the Chief, Finance Division; subject - Separation Allowance, we stated: "Under Section 262.32 . . . , separation allowance is not to be paid when the period of separation is less than 90 days." To the extent that the opinion stated in that memorandum is inconsistent with the above (with respect to grants approved before the termination of the period of separation), it is modified.

f. Also the following question has been posed: "whether the granting of a Separation Allowance 'for the convenience of the Government' as set forth in Section 262.1 of the SGAR's constitutes an administrative decision to be made by the Director of Personnel or his designee based on such evidence as he deems material and relevant to establish the fact that the separation is 'for the convenience of the Government.'" We view the expression "for the convenience of the Government" as a mere descriptive headline. The actual substance of the provision (subparagraph d) follows this expression. Read in conjunction with the preamble of paragraph 262.1, subparagraphs d(1) and (2) clearly convey the thought that the existence of the conditions warranting the separation is to be determined administratively. An officer delegated authority to approve allowances may make the determination on the basis of whatever considerations he chooses to entertain, so long as he is not arbitrary or capricious and does not otherwise abuse his discretion. You will note that subparagraph d(2) provides very great latitude for a determination that a separation is "in the interest of the Government."

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3. The Office of General Counsel is aware that this construction of the regulations could lead to some abuse in the determination of when a condition "appears" to require separation for the required length of time. Therefore, they have submitted this matter to the attention of the Director of Personnel with the recommendation that every precaution be taken to assure compliance with the standards of good faith and reasonableness set forth in this decision.



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Chief, Finance Division

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